(Part I.—Preliminary.)

MADRAS ACT No. V OF 1898[1].

[THE MALABAR WILLS ACT, 1898.]

[*9th July* 1898 ; *3rd August* 1898.]

An Act to declare the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons.

Preamble. WHEREAS doubts have arisen regarding the testamentary power of persons governed by the Marumakkatayam or the Aliyasantana law of inheritance ; and whereas it is expedient to remove such doubts, and to provide rules for the execution, attestation, revocation and revival of the wills of such persons ; It is hereby enacted as follows :—

PART I.

PRELIMINARY .

Short title. **1.** (1) This Act may be called the Malabar Wills Act, 1898.

Local extent. (2) It extends to the whole of the Presidency of Madras ; and

Commencement. (3) It shall come into force on such date [2] as the [3] [State Government] by notification shall appoint in this behalf :

Provided that nothing in this Act shall be deemed to affect the Hindu Wills Act, 1870.[4] Central Act XXI of 1870.

Interpretation clause. **2.** In this Act, unless there be something repugnant in the subject or context,—

"Minor." (1) "minor" means any person who shall not have completed the age of eighteen years :

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[1] For Statement of Objects and Reasons, *see Fort St. George Gazette* Supplement, dated 24th November 1896, p. 2 ; for Report of the Select Committee, *see ibid*, dated 8th May 1898 ; for Proceedings in Council, *see ibid*, dated 12th January 1897, p. 23 ; *ibid*, dated 9th March 1897, p. 45 ; *ibid*, dated 1st February 1898, p. 13 ; *ibid*, dated 3rd May 1898, p. 34 ; and *ibid*, dated 12th July 1898, p. 3.

The Governor-General's assent to this Act was published in the *Fort St. George Gazette*, dated 16th August 1898.

[2] The Act came into force on 2nd September 1898, *see Fort St. George Gazette*, 1898, Pt. I, p. 818, Notification No. 421, 2nd September 1898.

[3] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[4] Repealed by Central Act XXXIX of 1925.

(2) "will" means any legal declaration of the intentions of the testator with respect to his property which he desires to be carried into effect after his death : "Will."

(3) "codicil" means an instrument made in relation to a will and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will. "Codicil."

PART II.

OF WILLS.

3. This part shall apply to persons domiciled in the Presidency of Madras who are governed by the Marumakkatayam or the Aliyasantana law of inheritance. Persons to whom this Part shall apply.

4. Every person of sound mind and not a minor may by will dispose of property which he could legally alienate by gift *inter vivos* and shall be deemed to have been always competent so to dispose of such property. Persons capable of making wills.

Explanation I.—Persons who are deaf or dumb or blind are not thereby incapacitated for making a will, if they are able to know what they do by it.

Explanation II.—One who is ordinarily insane may make a will during an interval in which he is of sound mind.

Explanation III.—No person can make a will while he is in such a state of mind whether arising from drunkenness or from illness or from any other cause that he does not know what he is doing.

5. A will or any part of a will, the making of which has been caused by fraud or coercion, or by such importunity as takes away the free agency of the testator, is void. Will obtained by fraud, coercion or importunity.

6. A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will. Will may be revoked, or altered.

7. Nothing contained in section 4 shall— Saving clause.

(*a*) affect any right established before the commencement of this Act by a final decree of a Court of competent jurisdiction ;

(*b*) authorize a testator to deprive any persons of any right of maintenance of which, but for section 4, he could not deprive them by will ;

(Part II.—Of Wills. Part III.—Of the Execution, Attestation, Revocation, Alteration and Revival of Wills.)

(c) affect any law of intestate succession or authorize any testator to create in property any interest which he could not have created prior to this Act.

PART III.

OF THE EXECUTION, ATTESTATION, REVOCATION, ALTERATION AND REVIVAL OF WILLS.

Persons to whom this Part shall apply.

8. This part shall apply to persons governed by the Marumakkatayam or the Aliyasantana law of inheritance, whether they are domiciled in the Presidency of Madras or not.

Execution of wills and codicils.

9. All wills and codicils made on or after the date of the commencement of this Act within the Presidency of Madras, and all such wills and codicils made outside the said Presidency so far as relate to immovable property situated within the said Presidency, must be executed according to the following rules :—

1*st.*—The testator shall sign or shall affix his mark to the will, or it shall be signed by some other person in his presence and by his direction.

2*nd.*—The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

3*rd.*—The will shall be attested by two or more witnesses, each of whom must have seen the testator, sign or affix his mark to the will, or have seen some other person sign the will in the presence and by the direction of the testator, or have received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person ; and each of the witnesses must sign the will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Incorporation of papers by reference.

10. If a testator, in a will or codicil duly attested, refers to any other document then actually written, as expressing any part of his intentions, such documents shall be considered as forming a part of the will or codicil in which it is referred to.

Witness not disqualified by interest or by being executor.

11. No person, by reason of interest in, or of his being an executor of a will, is disqualified as a witness to prove the execution of the will or to prove the validity or invalidity thereof.

(Part III.—Of the Execution, Attestation, Revocation, Alteration and Revival of Wills.)

Revocation of will or codicil.

12. No will or codicil, nor any part thereof, shall be revoked otherwise than by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Effect of obliteration, interlineation or alteration in a will.

13. No obliteration, interlineation or other alteration made in any will after the execution thereof shall have any effect, except so far as the words or meaning of the will shall have been thereby rendered illegible or undiscernible, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; save that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revival of a will or codicil.

14. No will or codicil, nor any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil, which shall be partly revoked and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown by the will or codicil.

Execution and revocation of will or codicil by soldiers or mariners.

15. No will or codicil made by a soldier employed in an expedition or engaged in actual warfare or by a mariner at sea and no revocation by such person of his will or codicil shall be deemed invalid by reason only of such will, codicil or revocation not being made in accordance with the provisions of this Part.